UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/43
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 (b), (c) and (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS; FREEDOM OF EXPRESSION; RELIGIOUS INTOLERANCE

Written statement submitted by the Association for World Education, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 1999]

GE.99-10650 (E)

The Rushdie affair, the Rushdie syndrome, and a decade Of United Nations reactions

1. On the tenth anniversary of Ayatollah Khomeini's fatwa against the British writer Salman Rushdie, the Association for World Education is submitting a substantive documentation on the Rushdie affair the greatest freedom-of-opinion-and-expression issue of our time, and on the efforts of United Nations human rights bodies to address that issue.

2. We firmly believe that a clear condemnation of the fatwa by the Organization of the Islamic Conference (OIC), and by its member States, at the fifty-fifth session of the Commission on Human Rights would be a real contribution to the protection of article 19 of the Universal Declaration of Human Rights - and for the struggle against terrorism and summary executions. The OIC is the appropriate body to make this condemnation, as representative of the Government of the Islamic Republic of Iran have constantly stressed that the fatwa is binding on all Muslims and not just on Iranians.

3. The Iranian Government has repeatedly cited the declaration adopted at the 18th meeting of foreign ministers of the OIC held in Riyadh (Saudi Arabia) on 13-16 March 1989, which "had proclaimed, in unambigous terms, the apostasy of Salman Rushdie". Indeed, the 44 foreign ministers present at that meeting did promulgate a ban on The Satanic Verses, but they did not comment on the fatwa that sentenced its author and publishers to death. However, they did pronounce Salman Rushdie to be an apostate. As the traditional interpretation of Shariah law requires that the punishment (hadd) for an apostate (ridda) should be death, one of the three cases where a Muslim's blood may be legally shed, we believe that it is the OIC that should declare the fatwa contrary to international human rights norms.

4. The fatwa has remained for 10 years a constant threat against the life of Salman Rushdie, as well as being an impediment to the normal functioning of the Islamic Republic of Iran within the world community.

5. Meeting with British Foreign Secretary Robin Cook, as recently as 24 September 1998 - 10 years after the publication of The Satanic Verses - the Foreign Minister of the Islamic Republic of Iran, Dr. Kamal Kharazi, declared that the Iranian Government

> "has no intention, nor is it going to take any action whatsoever to threaten the life of the author of *The Satanic Verses* or anybody associated with his work, nor will it encourage or assist anybody to do so. Accordingly, the Government dissociates itself from any reward that has been offered in this regard and does not support it."

6. Although this statement allowed the British Government to resume full diplomatic relations with Tehran, broken off in 1989, it soon became evident that these assurances were similar to those expressed by Iranian diplomats in June 1989, soon after the death of Ayatollah Khomeini, and since then. Foreign Minister Kharazi readily acknowledged that he was saying nothing new: "We did not adopt a new position with regard to the apostate Salman Rushdie, and our position remains the same as that which has been repeatedly stated by the Islamic Republic of Iran's officials." Moreover, since Iran considers

that Islam does not allow a division between religion and government, the separation of a religious fatwa from government policy would violate this principle.

7. It is important to distinguish between two types of religious rulings in Iran: a fatwa and a hukm - the former remains valid only during the lifetime of the religious authority who issues it; the latter continues in effect beyond his death. Despite the Western habit of referring to the edict against Rushdie as a fatwa, Iranian spokesmen have universally regarded it as a hukm. ("This is not a fatwa which died with the death of the religious leader who issued it.... It is a hukm which is permanent and it will stay in place until it is carried out." - Ayatollah Javardi-Amoli, February 1997).

8. Ayatollah Khomeini's binding fatwa (hukm) of 14 February 1989 reads:

> "I inform the proud Muslim people of the world that the author of The Satanic Verses book - which is against Islam, the Prophet, and the Koran - and all involved in its publication, who were aware of its content, are sentenced to death." "Anyone who dies in the cause of ridding the world of Rushdie", he added, "will be regarded as a martyr and go directly to heaven".

9. On 17 February, the then President, Ali Hoseyni Khamane'i, declared that if Salman Rushdie were to repent, "it is possible that the people may pardon him". But, on 19 February, following Rushdie's inadequate apology, Ayatollah Khomeini complemented his religious fatwa (hukm):

> "Even if Salman Rushdie repents and becomes the most pious man of [our] time, it is incumbent on every Muslim to employ everything he has, his life and his wealth, to send him to hell.... If a non-Muslim becomes aware of his wherabouts and has the ability to execute him quicker than Muslims, it is incumbent on Muslims to pay a reward or a fee in return for this action."

10. On 1 March 1989, the Special Rapporteur on summary or arbitrary executions referred to this unusual call for arbitrary execution when introducing his annual report to the Commission:

> "The Human Rights Committee has observed that arbitrary killings are forbidden and the law must strictly control and limit the circumstances in which a person may be deprived of his life.... The right to life is a right from which all other rights flow."

11. In a subsequent reply to the Special Rapporteur's 3 March cable from the Centre for Human Rights, the Iranian Government made its position clear:

> "The Special Rapporteur's intervention in the case of Salman Rushdie's criminal offence against Islam and the world Muslim community was outside his mandate and thus unwarranted." (E/CN.4/1990/22, para. 254)

12. In an interview four years later, Iranian President Ali Akbar Hashemi Rafsanjani referred to the fatwa against Salman Rushdie:

> "This is prescribed by an Islamic law that has been in existence for a thousand years. Even if the Imam [Ayatollah Khomeini] had not pronounced a fatwa, it could have been traced in the books of great Islamic scholars. It is written that anyone cursing the Prophet is condemned to death." (Time International, 24 May 1993)

13. Soon after the fatwa's proclamation, the Iranian Ambassador to the Holy See declared that he would kill Salman Rushdie with his own hands, and Iranian Interior Minister Ali Akbar Mohtashemi called on hizbollah agents worldwide to execute him. Also on 15 February, Ayatollah Hassan Sana'i, head of the 15 Khordad Foundation - created by the Iranian Government on 15 June 1979 - appeared on Iranian TV and offered $3 million to any Iranian and a $1 million to any foreigner who killed Rushdie; he raised the prize money to $2 million in March 1991 - and "with additional expenses" on 17 June 1992 (Iran Times, 26 June 1992); on 2 November 1992, he called on "all Muslims of the world to unite and make an effort to end the life of the apostate Rushdie". Three days after Ayatollah Sana'i announced that this foundation would "send volunteers abroad to execute the death sentence," Iran's Supreme Guide, Ali Khamane'i, reappointed him - and nine others - as a member of the official Council on Expediency and Discernment. (Iran Times, 13 and 20 November 1992). Yet, in December 1997, when Ayatollah Sana'i again raised the bounty to $2.5 million, President Ali Akbar Hashemi Rafsanjani declared that "this foundation is a non-governmental foundation and its decisions are not related to government policies".

14. On 3 July 1991, Ettore Caprioli, the Italian translator of The Satanic Verses, was grievously injured, while Hitoshi Igarishi - professor of literature and an admirer of Islamic civilization - who had translated the book into Japanese, was executed in Tokyo on 12 July 1991. William Nygaard, the Norwegian translator, was knifed.

15. On 30 June 1992, 147 out of 270 deputies of the newly elected Majles (Iranian National Assembly) signed a letter condemning the British Parliament for receiving Salman Rushdie. It read, inter alia:

> "We deputies of the Majles, in obedience to the decisive views of the eminent leader, His Eminence Ayatollah Ali Khamane'i, declare that the Imam's historic fatwa on the apostasy of Salman Rushdie remains in force as before and that all Muslims and all the world's hezbollah forces are duty-bound to carry it out."

In November 1992, Iran's Chief Justice, Ayatollah Morteza Moqtadi, also confirmed that Ayatollah Khomeini's fatwa (hukm) was irrevocable.

16. On 14 February 1993, Ayatollah Ali Khamane'i, who had succeded the Ayatollah Khomeini in June 1989 as Iran's Supreme Guide, confirmed that the death sentence must be carried out whatever the circumstances:

> "Imam Khomeini has shot an arrow at this impudent apostate. The arrow is moving to its target and will sooner or later hit it. The verdict

must undoubtedly be carried out and will be carried out.... Solving the Rushdie issue is possible only with the handing of this apostate and infidel person to Muslims."

17. The Committee on Economic, Social and Cultural Rights dealt explicitly with the Rushdie affair in its concluding observations on Iran's initial report (see E/1994/23-E/C.12/1993/19, para. 128).

18. On 30 October 1992, during the examination of Iran's second periodic report at its forty-sixth session, three experts of the Human Rights Committee raised the case of Salman Rushdie, (Mr. Rhein A. Myullerson, Mrs. Christine Chanet, and Mrs. Rosalyn Higgins), inter alia concerning the incompatibility between the International Covenant on Civil and Political Rights and the Ayatollah Khomeini's 1989 fatwa (see A/48/40, paras. 208, 217, 234).

19. On 7 April 1993 at its forty-seventh session, the representative of the Judicature of Iran, Mr. Hussain Mehrpour, replied:

"Several members had referred to the death sentence passed on the writer Salman Rushdie and had requested an explanation of its relationship to the Covenant. The Western world must understand that Mr. Rushdie's book was a severe insult not to Iran but to Islam and to the Prophet, a person considered by all the Islamic world as the messenger of God.... Moreover, it was important to point out that the Iranian Parliament had not passed any law calling for Mr. Rushdie's execution, nor had any court condemned him. Any action taken in response to that decree would be based on an individual's religious belief, not on a formal judicial decision."

20. It is most regrettable that, until 1993, neither the Commission nor the Sub-Commission passed a resolution condemning the fatwa or the subsequent public incitations to murder British writer Salman Rushdie. Then, in resolution 1993/62 on the "Situation of human rights in the Islamic Republic of Iran", the Commission finally made this reference:

"Also expresses its grave concern that there are continuing threats to the life of a citizen of another State which appears to have the support of the Government of the Islamic Republic of Iran and whose case is mentioned in the report of the Special Rapporteur" (para. 5).

21. Resolution 1994/73 added, "... to the life of Mr. Salman Rushdie, as well as to individuals associated with his work" (para. 5). This wording remained the same in resolutions 1995/68 and 1996/84, but in 1997/54 there were two additions: "and deeply regrets the increase announced in the bounty offered for the assassination of Mr. Rushdie by the 15 Khordad Foundation" (para. 2 (d)); and "Calls upon the Government of the Islamic Republic of Iran ... to provide satisfactory written assurance that it does not support or incite threats to the life of Mr. Rushdie" (para. 3 (f)). Resolution 1998/80 went further: "... and deeply regrets the failure of the Government to condemn the bounty for the assassination of Mr. Rushdie by the 15 Khordad Foundation" (para. 3 (e)); and again "Calls upon [the Government] to provide satisfactory written assurances that..." (para. 4 (i)).

22. Today, there is near-unanimous agreement in Iran that the edict against Rushdie is a permanent decree, one which both constitutes government policy and at the same time is beyond the competence of government to affect. Therefore, neither President Mohammad Khatami nor Foreign Minister Kamal Kharrazi speaks with authority for the Government of Iran on this subject. Only Ali Hoseyni Khamane'i, Khomeini's successor, can act and he has steadfastly supported the death edict.

23. The Rushdie affair began as a somewhat exotic matter, which many - especially in the United Nations - tried to ignore. But the infection festered, eating away at international norms, attacking the very heart of the International Bill of Rights, particularly the right to freedom of opinion and expression. Waves of Islamist assassinations have struck several Muslim countries, decimating writers, journalists, artists, intellectuals - those considered by religious extremists as "heretics" or "apostates" and therefore legitimate targets. Regarding "insults against Islam", there has been an escalation of death fatwas emanating from Iran, and elsewhere, against individuals and entire groups - even incitement to genocide by Ayatollah Muhammad Yazdi, the head of the Iranian judiciary, in a sermon on 4 July 1997, broadcast by Tehran's Voice of the Islamic Republic of Iran (BBC World Service), 1030GMT; see (E/CN.4/Sub.2/1997/NGO/15).

24. The Association for World Education, therefore, calls upon the Organization of the Islamic Conference (OIC) to make a clear and firm declaration indicating that the 10-year-old fatwa of Ayatollah Khomeini against British citizen Salman Rushdie is not compatable with internationally recognized human rights norms.

25. The Association for World Education also calls upon the Commission on Human Rights to adopt a resolution of condemnation which would give hope to many millions worldwide, who will never accept that any authority, whether religious or secular, can arbitrarily condemn a person to death by decree - for heresy, apostasy, an opinion, or a book.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/44
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 January 1999]

GE.99-10654 (E)

1. Human Rights Watch is deeply concerned at the widespread failure of Governments to combat violence against women. In countries researched by Human Rights Watch, Governments continue to engage in or allow violence against women with impunity. Research by Human Rights Watch indicates that when Governments do respond to allegations of violations, their investigation into abuses is often inadequate and tainted by discriminatory attitudes toward women.

2. Human Rights Watch research, as well as that of the Special Rapporteur on violence against women, shows the mutually reinforcing relationship between discrimination against women and violence against women. De jure discrimination, as well as customary practices, keep many women in a subordinate position, making them particularly vulnerable to violence. When women who are victimized seek justice, discriminatory attitudes and specific practices create often insurmountable obstacles. The resulting impunity for violence against women reinforces the perception that violence against women is insignificant and even acceptable. Government efforts to combat violence against women must also include repeal of discriminatory laws and ending discriminatory practices.

3. Human Rights Watch research conducted in Pakistan, Peru, the Russian Federation and South Africa illustrates the numerous obstacles women face when seeking justice after having been victims of sexual assault and intimate abuse. Police will frequently refuse to take the women's complaints. Women must seek out forensic medical doctors to collect corroborating evidence. All too often, the forensic medical doctors are ill trained in documenting sexual violence, may not even be accessible to the women, may charge money and will not treat injuries. Even if a woman can successfully file a complaint and obtain the forensic evidence collected, the crime may be treated as a private actor crime and she may be forced to engage her own attorney to initiate legal proceedings. In some countries, if the alleged rapist is found not guilty, the woman is then vulnerable to being charged with adultery and punished.

4. The Taliban in Afghanistan is an extreme example of a regime which enforces egregious discrimination against women through violence. Women living under Taliban rule struggle to survive life-threatening discrimination and violence. The rigorously enforced discriminatory edicts include prohibitions against women working, leaving their homes without being escorted by a close male relative, receiving medical treatment from a male doctor or in a non-segregated hospital, and appearing in public without being fully covered. For the women of Afghanistan, many of whom are widows, this systematic discrimination literally deprives them of the ability to obtain food, water and other basic necessities for their children and themselves. Women who dare to defy the Taliban are readily subjected to violence. Human Rights Watch has received reports of women being beaten by Taliban enforcers for the transgression of daring to walk alone or for lifting the edge of their veil to breathe more easily.

5. Although the Taliban in general have not used rape during their military campaigns, Human Rights Watch received consistent reports that young Hazara women were abducted and subjected to sexual assault by the Taliban during the attack on Mazar-I Sharif. The Taliban's refusal to recognize the inherent dignity and rights of women inevitably makes women vulnerable to violence.

6. However, in times of civil unrest, even in countries which do not codify systematic discrimination against women, women remain vulnerable to violence. The response of the Government of Indonesia to reports of rape of ethnic Chinese women during widespread civil unrest in May is an example of grossly inadequate State response to violence against women. The Government's first response was to deny that the rapes took place. Because the Government denied the rapes, no timely investigation was conducted. Recommendations by a fact-finding team that was finally appointed in July 1998 were never implemented. These recommendations included the establishment of a witness protection programme. The Government's attack on the credibility of non-governmental organizations led to threats against human and women rights activists in Indonesia. Those threats were never adequately investigated.

7. The Government questioned reports of rape by noting that it found no evidence that the rapes were reported to the police or hospitals. But activists in contact with some of the victims and their families said the latter were fearful of going to the police, not only because rape survivors are often stigmatized, but because of past treatment of the ethnic Chinese community by the police and because of the concern that elements of the military, of which the police are a part, may have been involved in the attacks. In the absence of appropriate State response, human rights and women's rights advocates bear the burden of providing services for rape survivors, collecting evidence to refute the government denial and monitoring the Government's belated investigation.

8. Regarding Algeria, which is also suffering from severe civil unrest, Human Rights Watch has received reports of attacks against women. The explicit targeting of women generally attributed to the armed Islamist factions, nominally headed by the Armed Islamic Group (GIA), demonstrates the treatment of women as spoils of war. Although most women are killed during indiscriminate attacks by the GIA on rural villages, the GIA have also intimidated, raped, mutilated and killed women for opposing their views and defying rules regarding dress, work, education and marriage.

9. Nowhere is the relationship between discrimination and violence more apparent than in times of war and internal armed conflict. Human Rights Watch has documented the targeting of women in numerous conflicts through widespread rape, sexual mutilation and sexual slavery, most recently in the former Yugoslavia and in Rwanda. Attacking women in times of conflict serves two purposes: it demoralizes communities by underscoring their inability to protect women from being treated as the "spoils" of victory and it fractures communities which stigmatize victims of sexual assault. Commanders and combatants who order or participate in the sexual assault of women may feel confident that they will not be held accountable for these violations, particularly if they occur in countries in which rape is ignored, victims are stigmatized and impunity for violence against women prevails.

10. Another consequence of targeting women is the creation of large numbers of displaced persons or refugees seeking protection from these attacks. However, even women who escape the conflict and settle in refugee camps find themselves still trapped by the dual threat of violence and discrimination. Research by Human Rights Watch in refugee camps for Burundians in Tanzania indicates that many refugee women are being beaten and raped by their husbands or partners. These women are unable to escape the abuse because of the practice in most camps of providing food and other basic necessities to male heads of households. Unable to obtain food and shelter in the camps because of this discrimination, some women escape the domestic violence by leaving the camps and risk being targeted by combatants.

11. In conclusion, each of these cases demonstrates the relationship between discrimination and violence. Women's lives are at stake so long as the international community responds to endemic discrimination and violence against women with token gestures. Human Rights Watch urges the international community to condemn strongly both discrimination against women and violence against women. It is also imperative that the international community take immediate action to repeal discriminatory laws, end discriminatory practices and set standards for appropriate State response to violence against women. This includes executing arrest warrants for the many war criminals indicted on charges of sexual violence by the International Criminal Tribunal for the Former Yugoslavia; investigating and indicting perpetrators of sexual violence during the genocide in Rwanda; and vigorously investigating allegations of sexual violence in times of civil unrest and armed conflict.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/45
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 January 1999]

GE.99-10662 (E)

The use of children as soldiers

1. More than 300,000 children under the age of 18 are currently participating in more than 30 conflicts around the globe.

2. In 1998, Human Rights Watch conducted field investigations on the use of child soldiers in Colombia, the Democratic Republic of the Congo, Sierra Leone and Uganda. Previous Human Rights Watch investigations have documented the use of child soldiers in Liberia, the Sudan and Uganda.

3. In Colombia, we found that all parties to the conflict - guerrilla groups, government security forces and Government-linked paramilitary groups - routinely recruit children for combat. Over 15,000 children are part of Colombia's national security forces. Up to 30 per cent of some guerrilla units and as many as 50 per cent of some paramilitary units are made up of children. Children participating in Colombia's conflict may be used to collect intelligence, make, deploy or deactivate mines, patrol with troops, and serve as advance troops during ambushes.

4. In Sierra Leone, we documented the forced recruitment of thousands of children by the Armed Forces Revolutionary Council/Revolutionary United Front during the conflict there. These children may be forced to engage in armed attacks against civilians, Civilian Defence Forces and the Economic Community of West African States Monitoring Group (ECOMOG). The Civilian Defence Forces (also known as kamajors), fighting on behalf of President Tejan Kabbah's Government, also recruited children despite numerous public pledges by the Government to desist from the use of child soldiers.

5. In the Democratic Republic of the Congo, large numbers of children are being recruited for use as soldiers, both by the Kabila Government and by the rebel forces. Government-sponsored recruitment drives have targeted children as young as 12. Similar drives by the rebels have recruited children as young as 11.

6. In Uganda, the abduction of children by the Lord's Resistance Army (LRA) has continued unabated. Credible estimates place the number of children abducted for use as child soldiers at between 6,000 and 10,000; between August 1997 and February 1998, in Kitgum district alone, between 1,200 and 1,500 children were reported to have been abducted by the LRA.

7. Human Rights Watch urges the Commission on Human Rights to:

(a) Support the adoption of an optional protocol to the Convention on the Rights of the child that would prohibit any form of recruitment or participation in hostilities by persons under the age of 18 in any armed forces or groups, both governmental and non-governmental;

(b) Encourage the Special Representative of the Secretary-General on the impact of armed conflict on children to continue on-site investigations in conflict areas where children are being used as soldiers;

(c) Include child soldier issues in resolutions regarding conflict situations, particularly calling on parties to conflicts not to recruit children, to immediately demobilize all children already recruited, and to facilitate the rehabilitation and reintegration of former child soldiers;

(d) Call for speedy ratification of the Statute of the International Criminal Court, which includes as a war crime conscripting or enlisting children under the age of 15 into armed forces or groups, and their active participation in hostilities.

Orphanages

8. Many thousands of children around the world live in orphanages and other non-penal institutions in appalling conditions, denied health care, nurturing and education, and exposed to cruelty and neglect. These children, from infancy until the age of 18, are deprived of basic rights at every stage of their lives.

9. Human Rights Watch has conducted field investigations and reported on the treatment of children in State institutions in China, Romania and the Russian Federation. We have found truly shocking patterns of neglect and abuse.

10. In 1998, we found that thousands of children in Russia who had been abandoned to State orphanages were exposed to appalling levels of cruelty and neglect. Medical personnel persuade parents of children with even minor disabilities to institutionalize them. Many of these children need not have been institutionalized, but could have been cared for far better at home or in foster homes at much less expense. These children, as well as abandoned children, are placed in Baby Houses where they are fed and changed, but, in many institutions, given no attention or nurturing.

11. At the age of four or five, doctors examine the children and decide whether they are "educable" or "ineducable". Many children are improperly diagnosed as retarded and "ineducable", condemned to spend their lives in dreadful institutions with no education, stimulation or nurturing care. Some are restrained in cloth sacks, tethered to furniture, denied stimulation, and sometimes left to lie in their own filth. "Educable" children receive some education, but are often treated cruelly, humiliated and beaten. Moreover, children who have grown up in these institutions bear a stigma that keeps them from getting jobs and leading normal lives. There is a high suicide rate among the "educable" graduates.

12. In China in 1996, we found a secret world of starvation, disease and unnatural death in State orphanages - a pattern of cruelty, abuse and malign neglect that had dominated child welfare work in China since the early 1950s. The evidence - largely taken from official government documents - indicated that the likelihood of survival beyond one year for a newly admitted orphan in China's welfare institutions nationwide was less than 50 per cent in 1989.

13. In Romania in 1990, we found children living in dreadful conditions in orphanages; we do not know what the situation of those children is at present.

14. Human Rights Watch calls on the Commission on Human Rights to:

(a) Encourage the United Nations Committee on the Rights of the Child to undertake a study of the conditions in which children are kept in State orphanages around the world;

(b) Urge UNICEF to expand its efforts to deinstitutionalize children and support families and to engage in a campaign aimed at dispelling prejudice against abandoned children and children with disabilities.

15. We also ask the United Nations Special Rapporteur on torture to investigate conditions in State non-penal institutions in the Russian Federation and China, looking at inhuman and degrading treatment, including the use of isolation, restraints, sedatives, and physical and psychological abuse.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/46
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 14 of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS

Written statement submitted by Human Rights Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[18 January 1999]

GE.99-10674 (E)

1. Refugees, internally displaced persons and asylum seekers are some of the groups most vulnerable to human rights abuse. In 1998, UNHCR estimated that there were a total of 50 million refugees and internally displaced persons in the world. Meanwhile xenophobia and anti-immigrant sentiments prompted States to close their doors to those forced to flee their homes. Refugee protection could not always be guaranteed even within countries of asylum. The militarization of refugee camps; cross-border attacks and incursions; the forced conscription and abduction of children into armed forces; sexual and domestic violence against women; and forcible round-ups of refugees were some of the protection problems that Human Rights Watch documented over the past year.

The right to asylum

2. In the year of international celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, the fundamental right "to seek and enjoy in other countries asylum from persecution" was denied to large numbers of people across the globe. Nowhere was this trend more apparent than in Western Europe, where efforts to harmonize European asylum policy led to a barrage of restrictive practices. "In-country" strategies such as "safe havens" and "internal flight alternatives" were used to contain refugee flows, with little regard as to whether they offered meaningful protection. States continued to apply "safe third country" and "safe country of origin" policies coupled with accelerated procedures and limited rights of appeal designed to limit their obligations to asylum seekers. Carrier sanctions, visa restrictions and detention were used to deter asylum seekers and penalize the act of seeking asylum. Restrictive interpretations of the 1951 Convention deprived deserving refugees of needed international protection. The disturbing trend, endorsed by the Government of Austria in its role as president of the European Union in 1998, to substitute lesser forms of temporary protection for full Convention refugee status continued. Human Rights Watch calls on European States to uphold their international obligations and provide full refugee protection to those fleeing persecution.

Detention of asylum seekers

3. In industrialized and developing countries alike, asylum seekers are frequently detained, sometimes arbitrarily and indefinitely, or without the right to judicial review. The detention of asylum seekers frequently obstructs access to necessary legal assistance and information. Detaining asylum seekers - many of whom may have escaped from arbitrary imprisonment, torture and other ill-treatment - can have a serious impact on mental health. Incarceration in often inhumane conditions alongside criminals, prolonged confinement in prisons or prison-like conditions and severe restrictions on freedom of movement are entirely inappropriate treatment for asylum seekers and may violate international standards.

4. As a general rule, asylum seekers should not be detained. Such detention can be justified only when strictly necessary, on a case-by-case basis. In all cases, meaningful alternatives to detention should be utilized. Conditions of detention should always reflect the non-accused, non-criminal

status of asylum seekers and should be humane and in accordance with international standards. Unaccompanied minors seeking asylum should never be detained.

5. Human Rights Watch has found that the Immigration and Naturalization Service (INS) of the United States of America has failed to ensure that basic national and international standards are met in local jails, where it housed more than half of its 16,000 detainees in 1998. Human Rights Watch documented physical abuse by jail staff, sub-standard medical and dental care, and severely curtailed access to family, friends and legal representatives. Following the release of those findings in September 1998, INS began to include some minimal standards in its contracts with local jails. Even these limited standards are unenforceable, as INS is unable to monitor compliance.

6. At any one time, approximately 200 to 500 immigration detainees are unaccompanied minors placed in the custody of INS. INS faces a serious conflict of interest in assuming responsibility for the care and protection of the same children it is seeking to deport and remove from the United States. As many as one third of these children are held in secure detention facilities, where they may be commingled with juveniles detained for violent acts of delinquency. Too often, children in INS custody do not receive adequate legal information or representation, may be denied an education in a language they understand and may be transferred without the knowledge of their families or attorneys.

Growing xenophobia

7. In Africa, despite a long and generous tradition of asylum, rising xenophobia, economic strain, environmental degradation and threats to national and regional security caused by militia elements among refugee populations have prompted States, such as Kenya, South Africa and Tanzania, to introduce restrictive policies which severely undermine the protection of many refugees. Historically one of the most welcoming refugee hosts, the Government of Tanzania rounded up thousands of foreigners living in western Tanzania in late 1997 on security grounds and forced them into refugee camps. This group included several thousand Burundian refugees who came to Tanzania in the 1970s. Human Rights Watch condemns the forcible round-ups and calls on the Government of Tanzania to seek alternative arrangements to secure its border.

Refoulement

8. Many States continue to violate the fundamental principle of non-refoulement. In 1997, for example, Human Rights Watch protested a series of often violent forcible returns of thousands of Burmese refugees from Thailand to border areas of Burma, where many of them were vulnerable to human rights abuse. Human Rights Watch remains concerned that in the absence of effective refugee status determination procedures in Thailand, efforts to expel undocumented migrants could result in the forcible return of those with a well-founded fear of persecution in Burma. Human Rights Watch calls on Thailand to cease the refoulement of any refugees with a well-founded fear of persecution in Burma, to keep its borders open and to ensure safe asylum to all refugees fleeing human rights abuses in Burma.

9. In March 1998, the round-up, detention, and deportation of tens of thousands of illegal migrants in Malaysia resulted in the forcible return to Indonesia of some 500 Achenese, many of whom had valid fears of persecution and ill-treatment in Indonesia. Human Rights Watch calls on the Government of Malaysia to allow UNHCR access to the immigration detention camps to conduct refugee status determination screening and to cease the deportation of those with a well-founded fear of persecution in Indonesia.

Violence against women

10. Women constitute a large proportion of many refugee populations and are particularly at risk in refugee camps. In Tanzania, for example, Human Rights Watch documented high rates of sexual and domestic violence against Burundian women refugees, perpetrated for the most part by other refugees, local residents and at times by local police officers. UNHCR protection officers and the Tanzanian authorities did not adequately address sexual and domestic violence as serious protection problems. Following negative international attention, UNHCR has belatedly begun to take some preliminary steps to prevent and address sexual violence in these camps. Human Rights Watch urges UNHCR to implement fully existing UNHCR guidelines on the protection of refugee women and prevention of sexual violence, and to develop guidelines to prevent and respond to domestic violence. It calls on the Government of Tanzania to take steps to ensure that the perpetrators of sexual and domestic violence against refugee women are brought to justice.

Internal displacement

11. Worldwide there are an estimated 30 million internally displaced people. The largest internally displaced population in the world is in the Sudan, where an estimated 4 million people are displaced. The Government of the Sudan continued, for the tenth year, to deny access to the 400,000 internally displaced and other needy persons living in the rebel areas of the central Nuba Mountains. Access of humanitarian relief was also barred to some 350,000 displaced people in the southern region of Bahr El Ghazal in February and March 1998. Human Rights Watch urges the Government of the Sudan to immediately provide humanitarian access to the rebel areas of the Nuba Mountains, Bahr El Gazal and Eastern Equatoria.

12. In Colombia an estimated 240,000 people were displaced by political violence during 1998, bringing the total number of displaced to 1.2 million. The displaced continued to be the targets of threats, harassment and attacks by all parties to the conflict, particularly by the paramilitary groups that continue to enjoy the tacit or open support of the Colombian military. Human Rights Watch calls on the Government of Colombia to take steps to ensure the safety of all returnees. Displaced persons should not be forced to return to areas where their safety cannot be guaranteed. It also urges the Government to provide adequate humanitarian assistance to all displaced persons and returnees.

Mass expulsions

13. Human Rights Watch is concerned about reports of mass expulsions on the basis of nationality and ethnicity from Ethiopia and Eritrea since a border dispute between the two countries in May 1998. By early January 1999, Ethiopia had reportedly rounded up, detained and expelled to Eritrea some 45,000 Eritreans and Ethiopians of Eritrean origin. There have also been claims that an estimated 35,000 Ethiopians were deported from Eritrea during the same period. Human Rights Watch calls on the Governments of Ethiopia and Eritrea to protect their civilian population and to cease immediately these deportations and accompanying violations of the rights of deportees, which violate international human rights and humanitarian law.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/47
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the followng written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 January 1999]

GE.99-10690 (E)

In the name of security: Israel's human rights violations in 1998

1. This statement is submitted jointly by the International Commission of Jurists (ICJ) and its Palestinian affiliate LAW - the Society for the Protection of Human Rights and the Environment

1. A crucial test for the rule of law

2. Five years on from the signing of the Declaration of Principles on 13 September 1993, there has been a marked increase in house demolitions, land confiscation and settlement activities by Israel with a view to creating facts on the ground before the final status negotiations.

3. Israel claims to be the only democratic political system in the Middle East. Respect for human rights is a fundamental principle of democracy. However, Israel justifies the annulment of many of these rights with security, legalizing what cannot be legalized, such as the use of torture. A democracy which sanctions torture, administrative detention and arbitrary arrests, restrictions of the freedom of expression, as well as illegal settlements, land confiscation and house demolitions, is untenable.

4. Israel has refused the Palestinians the protection afforded by the human rights treaties it has signed. Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR) censured Israel's refusal to apply the respective covenants in the Occupied Territories and insisted on Israel's obligation to protect the human rights of Palestinians living in the Occupied Territories.

5. While denying the applicability of human rights treaties to the Occupied Territories, Israel simultaneously refuses to recognize and apply the international treaty specifically made to protect human rights in such territories, the Fourth Geneva Convention, in violation of United Nations General Assembly resolutions and in contradiction with international public and legal opinion.

2. Jerusalem

6. Israel continues to employ arbitrary measures, incompatible with international law, in order to expel Palestinians from Jerusalem and to replace them with Jewish settlers with the purpose of cementing control over the city. The policy applied includes confiscation of identity cards, removal of residency rights, an unjust tax and benefit system, denial of building permits and house demolitions.

7. In a significant increase from past years, about 1,466 Jerusalem identity cards were confiscated between 1996 and 31 July 1997. Between January and August 1998, 346 Jerusalem identity cards were confiscated.

8. The denial of building permits to East Jerusalem Palestinians causes immense overcrowding and, with it, potential health and social problems. Mechanisms to challenge these measures are lengthy and costly, which places them beyond the means of the majority.

9. While income levels decline among Palestinians due to closure and discrimination, they continue to be forced to pay the same level of taxes and are often discriminated against in the receipt of rebates, benefits and government services. The CESCR therefore rightly criticised Israel's Permanent Residency Law and the withdrawal of residency rights from Palestinians living in Jerusalem.

3. Settlements

10. In violation of international law and the Wye Memorandum, the Minister for Foreign Affairs of Israel, Ariel Sharon, called on settlers to "take over the hills of the West Bank before it is too late". The day after he made this statement, armed settlers seized land from the Arab village of Kufur Qadum in the Nablus district, installing mobile houses on top of nearby hills. This action has been replicated in at least a dozen recorded instances, with the tacit or active support of the Israeli military.

11. It is estimated that at least 25,000 dunums of land have been confiscated from Palestinians for settlements, including land confiscated for by-pass roads, infrastructure and military installations to protect and service settlements.

12. Under article 49 (6) of the Fourth Geneva Convention, Israeli settlements in the Occupied Territories, including East Jerusalem, are clearly illegal. The Committee on the Elimination of Racial Discrimination (CERD) restated this position. CESCR went further and found that the "consequence, if not the motivation, is the fragmentation and isolation of Palestinian communities".

4. House demolitions

13. House demolitions have continued apace and are used to secure control over territory, sometimes as a prelude to settlement building. Between the signing of the Oslo Agreement and 31 December 1998, 724 demolitions have taken place. The practice of house demolitions clearly violates the Fourth Geneva Convention. It was criticized by CESCR and the Human Rights Committee, and CERD called for a halt to the demolition of Arab property in East Jerusalem.

5. Closures and blockades

14. Blockades and closures are impermissible if employed, as Israel does, without regard to the human consequences and as a form of collective punishment.

15. In Gaza, 400 students are unable to return to universities. Across the Occupied Territories, the sick are unable to travel to receive treatment; goods cannot pass freely between the West Bank, Jerusalem, Gaza and travel externally; workers are restricted from travelling; even the Legislative Council is disrupted because elected members are denied travel or harassed.

16. As a means of guaranteeing security, closure has proved ineffective and is likely to exacerbate the environment that creates risks to security.

17. CESCR concluded that "closures have cut off Palestinians from their own land and resources, resulting in widespread violations of their economic, social and cultural rights".

6. The use of lethal force

18. The Israeli armed and security forces have continued to use heavy-handed methods, including lethal force, when confronted with Palestinian unrest or demonstrations. Three hundred and thirty-four Palestinians have been killed by Israeli soldiers or settlers since the beginning of the Oslo peace process.

19. Since the signing of the Wye Memorandum, the Israel Defence Forces (IDF) have responded with rubber-coated metal bullets and live ammunition against Palestinians protesting against Israeli violations of Wye and air attacks on Iraq, leaving five people dead and at least 570 persons injured. Among those wounded, 24 are still in serious condition. This figure includes 14 minors under the age of 18, of whom 8 are children under the age of 15. Ten of the 24 seriously injured were hit by "rubber" bullets or live ammunition in their head or face.

20. In 1998, the Human Rights Committee expressed concern about the numbers of Palestinians killed by security forces.

7. Torture

21. Israel is the only country in the world where torture has been legalized. Moreover, this practice was legalized by the Supreme Court, which should be the organ protecting human rights. In 1997, the Committee against Torture (CAT) rejected Israel's claim that it had special security obligations that should permit the use of torture. CAT concluded that even seeking to make the argument was improper: "Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited". However, in 1998, Israel made the same argument, which was again rejected by the Human Rights Committee and CAT. Both found Israel's application of "moderate physical pressure" to be in violation of the conventions. Torture or inhuman treatment are grave breaches of the Fourth Geneva Convention, which furthermore prohibits any physical or moral coercion against protected persons.

8. Arrest and detention

22. Israel continues to arrest Palestinians, disregarding due process safeguards. In the past five years, 880 Palestinians have been administratively detained for periods ranging from two months up to four years. Currently, 97 Palestinians are held in administrative detention. The Human Rights Committee noted that Israel's present application of administrative detention was incompatible with the International Covenant on Civil and Political Rights (ICCPR).

23. Furthermore, about 2,300 Palestinian political prisoners are detained in Israel, in most cases in violation of the Fourth Geneva Convention; some of them are held in solitary confinement. Lawyers are sometimes denied access to

Palestinian detainees. The Wye Memorandum provides for the release of 750 prisoners, but only 100 among the first 250 prisoners released were political prisoners.

24. The military court system continues to operate in a manner contrary to standards set out in the ICCPR and the Fourth Geneva Convention, including by admitting confessions extracted under torture.

9. Israeli pressure in the autonomous areas

25. Pressure by Israel to combat terrorism has encouraged the Palestinian Authority to take measures that constitute human rights violations, such as torture, arbitrary arrests and restrictions of the freedom of expression and assembly.

26. Beyond the serious violations of human rights, the consequence of these actions has been the erosion of judicial and democratic processes in the autonomous areas, thereby creating an even greater risk to human rights. The reaction of the local community to repression due to pressure from Israel has been a significant decline in support for the peace process and for the Palestinian Authority.

10. Human rights concerns in the Wye Memorandum

27. The security arrangements stipulated in the Wye Memorandum threaten to undermine respect for human rights and the rule of law. They create a security superstructure overseen through forums which govern matters of arrest, detention, imprisonment, censorship and military actions against groups and individuals. However, these forums are not accountable before any democratic institution and there is no judicial remedy against their decisions. Unlike previous agreements, the Wye Memorandum fails to include any standards that ensure respect for human rights by all parties concerned.

11. Conclusion

28. ICJ and LAW welcome Commission of Human Rights resolution 1998/1 and call upon this body to pursue its stand on the range of human rights violations committed by Israel. In 1999 more than ever, it has to be stressed that peace and security cannot be legitimately pursued and will not be achieved by violating human rights or by committing grave breaches of the Fourth Geneva Convention. These breaches furthermore constitute war crimes. By virtue of articles 146 and 147 of the Fourth Geneva Convention, all States parties have jurisdiction over such crimes and are under an obligation to prosecute or extradite their perpetrators. By this and other means, the international community has to ensure respect by Israel for the rights of the Palestinian residents.

---

1. Human rights in the context of globalization

1. Since 1952, the International Commission of Jurists (ICJ) has promoted the understanding and observance of the rule of law and the legal protection of human rights. Very early on, ICJ adopted a dynamic approach to the concept of the rule of law and it has always paid particular attention to social, economic and cultural rights as fully-fledged rights and to the rule of law as a factor of development. At their Triennial Meeting held in Cape Town, South Africa, in July 1998, the members of ICJ discussed the impact of globalization on human rights and the rule of law. Their conclusions are reflected below. They also adopted the "Cape Town Commitment" on the rule of law in a changing world.

2. ICJ calls upon the Commission on Human Rights to pay particular attention to the effects of globalization on human rights, in particular on the extent to which, in the context of this phenomenom, economic and social rights are respected or, on the contrary, violated. Indeed, the growing interdependence of peoples and national economies through the exchange of goods, services, capital, information and persons, the current liberalization and privatization policies, the resulting weakening of the regulatory capacity of States - which are traditionally expected to protect human rights - and the growing impact of the behaviour of global economic actors on the enjoyment of human rights by people in all parts of the world, have created a new context which could render some of the traditional mechanisms for the protection of human rights irrelevant.

2. The need for an optional protocol to the International Covenant on Economic, Social and Cultural Rights providing for a system of individual complaints

3. In the context of globalization, economic, social and cultural rights have to be understood, more than ever, as an indivisible part of human rights and must be implemented as such. The adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights providing for a system of individual complaints would be a crucial step in this direction. Through the examination of individual cases, this system would permit the development of a significant body of jurisprudence, which is absolutely indispensable if economic, social and cultural rights are ever to be taken seriously.

4. The 1993 World Conference on Human Rights supported the idea of an optional protocol. Notwithstanding this fact and although most controversial issues have already been discussed and resolved, progress towards the adoption of the protocol is slow and difficult. In order to stimulate this process and to ensure that progress is made during the fifty-fifth session of the Commission on Human Rights, ICJ plans to organize in February 1999 a half-day meeting for representatives of the Permanent Missions to the United Nations on the draft optional protocol.

5. ICJ cannot agree with the opinion that an optional protocol would only be acceptable once the State obligations arising from economic, social and cultural rights are defined more precisely. First, this objection

reintroduces the old preconceived idea that economic and social rights are not - yet - rights, but only objectives to be achieved. Second, criteria and benchmarks permitting the justiciability of those rights have already been presented in different intergovernmental and non-governmental forums, including by ICJ. Third, experience in the field of civil and political rights shows that the precise content of State obligations can be clarified only through the jurisprudence of a body applying an international instrument to individual cases.

3. Direct application of the rule of law to global economic actors

6. Under traditional legal concepts, the rule of law and human rights can only be protected, strengthened and developed by States and inter-State mechanisms, through national and international regulations. In response to economic globalization, the Commission on Human Rights should indeed strive to reinforce such regulations in order to counterbalance the strength of global economic actors. Pending the important normative and institutional developments necessary to achieve this aim, some important phenomena affecting people's daily lives may increasingly fall outside the scope of the rule of law. Therefore, it is equally important to explore how the rule of law and human rights - or at least the values which they convey - can be directly applied also to and by transnational corporations. Particular attention should be paid to analysing:

Which human rights and which aspects of the rule of law can be applied - through which concepts and mechanisms - directly to and by transnational corporations, and which of them necessarily require State intervention;

Whether and how existing human rights standards must be reformulated to apply directly to global economic actors.

7. In line with its "Cape Town Commitment", ICJ plans to convene an interdisciplinary workshop, including representatives of transnational corporations, to discuss these issues. The results of this workshop may be of particular interest for the sessional working group on the effects on human rights of the activities and working methods of transnational corporations, to be set up under resolution 1998/8 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

4. Implication of privatization and deregulation policies for the rule of law

8. Either in the framework of structural adjustment policies recommended by international financial institutions, or to obtain a situational advantage in global competition, several countries have decreased and streamlined regulations affecting the business community and privatized enterprises and services that were formerly in the public domain.

9. Deregulation often leads to the cancelling or weakening of legislation implementing and protecting economic, social and cultural rights. Privatized activities are no longer subject to the comprehensive principles of the rule

of law and human rights applicable to State behaviour, but only to looser principles applicable to private activities. It is, therefore, important to determine:

Which State activities cannot be privatized from the point of view of the rule of law;

Which aspects of the rule of law and of human rights should continue to apply to privatized activities and what mechanisms and rules of private and administrative law must ensure such horizontal direct effect;

Which regulations are necessary to implement international obligations under human rights treaties; which ones can be replaced by market mechanisms; and which ones constitute obstacles to the rule of law and the full enjoyment of human rights.

10. The social forum suggested in resolution 1998/14 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities could certainly play an important role in carrying out such an assessment. ICJ appeals to the Commission on Human Rights to authorize the establishment of this forum, which will permit a dialogue on a crucial subject between States, competent intergovernmental organizations, transnational corporations and NGOs.

11. In line with its "Cape Town Commitment", ICJ intends to contribute to the assessment of the elements mentioned above by organizing two missions to be conducted by multidisciplinary teams in two countries which have recently adopted privatization and deregulation policies - one in a developing country and the other in a post-socialist country in transition. The aim of these missions is to assess privatization and deregulation policies in those countries; their consequences for the rule of law and the effective enjoyment of human rights; and the measures taken to protect human rights in the new context. ICJ will publish the results of those missions and make recommendations to the authorities concerned, the private actors involved, international financial institutions and donor States. Based upon the results of these missions, ICJ also plans to organize an interdisciplinary workshop to draw general conclusions, which should assist the discussions on globalization of the social forum mentioned above.

5. Working with the World Trade Organization (WTO)

12. Experience in promoting and protecting human rights through intergovernmental mechanisms shows that NGOs have a crucial expert and lobbying role to play in the elaboration and implementation of new standards and mechanisms. The efficient performance of this role is greatly facilitated by formal observer status. WTO elaborates and implements global standards permitting the free flow of goods and capital, which have an impact on human rights. WTO regulations, however, do not provide any observer status for NGOs.

13. The Commission on Human Rights and States should therefore call for such an increased role of NGOs in WTO legislative activities and its adjudicatory process, in order to enable them to monitor these activities from the

perspective of the rule of law. Whilst implementing its "Cape Town Commitment", ICJ plans to lobby for this purpose, together with other human rights, environmental and development NGOs.

6. Human rights and trade, investment and financial policies

14. ICJ awaits with interest the working paper on "the ways and means by which the primacy of human rights norms and standards could be better reflected in, and could better inform, international and regional trade, investment and financial policies, agreements and practices", which the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted two of its expert members with preparing in 1998.

15. Trade, investment and financial agreements and policies are adopted by the very same States which adopt human rights treaties and are bound by them. States also decide upon the policies of international trade and financial institutions. In this field also, States have to ensure that their policies do not violate or hamper human rights, in particular economic, social and cultural rights, but rather respect them, protect them and facilitate their exercise.

16. Similarly, the relevant international organizations themselves have to be concerned by the human rights impact of their policies and decisions. In a time of globalization, no government department and no specialized organization can claim not to have a mandate in the field of human rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/49
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Items 7, 10 and 13 of the provisional agenda

THE RIGHT TO DEVELOPMENT

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

RIGHTS OF THE CHILD

Written statement submitted by Pax Christi International
Catholic Peace Movement, a non-governmental organization
in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 December 1998]

GE.99-10666 (E)

Human rights and development

1. Rights must always be seen in relationship to responsibilities, and also in relationship to needs. Unless this triad is kept clearly in mind, rights language and analysis can separate rather than unite those who are working for development.

2. For example, the right to life is correlative with the responsibility to preserve it and with the need for adequate resources, directly from the fruit of one's own labour, through a living wage or from the allotment f necessary means through some social mechanism of the community. Likewise, the right to a decent standard of living is correlative with the need for a physical and social environment that fosters a way of life in which people can experience their continuing personal development. This environment should include the opportunity to serve the common good, for all persons are social by nature and cannot reach their potential unless they invest in the good of all. Today we are coming to realize that concern for the common good includes care for the biosphere itself, of which we are a part.

3. Government has an essential role to play here, to promote the common good of society by seeing to it that basic human needs are met, that responsibilities are carried out and that rights are respected.

Integrating Human Rights and Development

4. Human rights are moral claims to whatever a person or a group needs in order to protect and develop life, liberty and the pursuit of happiness. These rights become legal and political when they are expressed in constitutional law. Most rights are not absolute because they exist in conflict with others' rights. It is precisely in adjudicating claims to rights that there is need for ethical norms or guidelines that can be accepted across cultures.

5. Pax Christi believes that the following two principles provide such norms:

1. The needs of the poor take priority over the wants of the rich;

2. The right of all members of a society to participate in decision-making that affects them takes priority over the ability of privileged individuals or groups to exclude them.

6. These principles provide the basis for practices that integrate human rights and development. Local, national and international policies should aim first and directly at satisfying the subsistence needs of all members of the society. These subsistence needs are for food, clothing, housing, basic education and basic health care. At the same time, care must be taken not to violate transcendence needs, such as freedom of assembly, speech, religion, the press and the opportunity to participate in decision-making at all levels of society. Only secondarily should policies aim at fostering availability of

goods and services beyond subsistence needs. Prioritizing policies in this way allows for growth but also for balance and for care for the physical environment. These principles provide an analytic tool for judging economic practices of both the public and private sectors.

Development and peace

7. The intrinsic relationship between development and peace becomes clear when we recognize that there are three closely related pressures against peace: (i) ecological degradation caused by mismanagement of natural resources, (ii) arms proliferation and use, whether by State controlled armies or terrorists and the threat of use of chemical and biological weaponry, and (iii) prolonged systematic poverty. Adequate development policy must take into account the cause and effect relationship among these three factors.

8. In regard to systematic poverty, it must be acknowledged that enormous wealth and crippling poverty measured in disease, stunted lives and early death do not exist side by side without any connection. In fact, the labour of poor people produces the wealth to which these same poor people, in many cases, do not have access. There cannot be an adequate distribution of wealth if there is only a minimum standard of living but no maximum standard of living in a society. Tolerance for unlimited wealth is destructive of the fabric of any society. Until this is acknowledged, many of the efforts to restructure economies in the direction of justice will fail because they do not face a major factor in the so-called "poverty problem". The "poverty problem" is at one and the same time a problem of unbridled quantitative growth.

9. The report of the Working Group on the Right to Development on its second session (E/CN.4/1995/11) recognized this by calling into question much of the conventional wisdom about development:

> "Since the right to development implies an integrated approach to political, social, economic and cultural rights as a whole, care should be taken to avoid dissociating the economic and monetary aspects of development from its social aspects and to enhance the dialogue between international social and humanitarian agencies and institutions responsible for financial and trade questions." (para. 88)

In its conclusions the report further notes:

> "The economic aspects of development seem to receive preference from funding bodies and donors over social aspects. Development assistance is not apportioned among specialized international agencies according to objective criteria related to the basic needs of individuals and population groups; the requirements of growth, production and productivity seem to win out over considerations that would make the human person 'the central subject of development' as called for in article 2 of the [1986] Declaration on the Right to Development." (para. 93).

Recognizing that the globalization of the economy "seems to be the most important change of our era", the final paragraph of the report has more relevance than when it was written four years ago:

> "The increasingly clear consequences of this globalization of the economy are a reduction in States' room to manoeuvre and the ever more relative nature of their influence on the enjoyment of the right to development. At the same time, international cooperation seems more and more essential to the universal enjoyment of this right. The corollary to the globalization of the economy, then, is a strengthening of solid, productive international fellow-feeling: otherwise the application of the Declaration on the Right to Development will be, if not a vain, then at least an inadequate exercise." (para. 94)

10. Pax Christi affirms these conclusions and in keeping with its character as a peace movement that works for peace as the fruit of justice, offers the following observations:

(a) The "international fellow-feeling" recognized as essential for overcoming the pressures against integral human development must be especially sensitive to the effect of maldevelopment on children, who are at once humanity's most precious inheritance and most vulnerable members. Children have the same human rights as adults. The treatment of children is the clearest indicator of respect for, or disregard of, human rights in practice. The right to development must address directly the violation of children through their involvement in war as soldiers and victims, their degradation through sexual exploitation, and their deformation through exploitative child labour practices. Finally, the existence of large numbers of street children and of child refugees and internally displaced children, many of them separated from their families, stand as an indictment against all those who allow these conditions to go unchecked.

(b) Pax Christi calls attention particularly to several factors which contribute to the destruction of children's potential for development. First, there is small hope for integral human development of children, or adults either, unless and until questions of development are treated in their moral dimensions. Economic and political policies and practices should be evaluated first from their direct impact on poor and vulnerable persons, and only then by their effect on economic growth measured quantitatively. Second, integrating human rights with the right to development requires that more attention be given to the need for fostering domestic-led economic strategies over export-led strategies. The assumption that what is good for trade is good for people needs to be called into question. A good place to begin is to examine the impact of the arms trade on issues of development. Just as the international community is coming to accept the fact that the export of tobacco has a negative impact on the health of an importing country, so, too, we need to recognize that the export of weaponry, legally or illegally, is death-dealing. Any financial profit from this trade is at the price of human misery. As the millennium draws to a close, and our interdependent human race is under the increased threat of terrorism, it is time to face up to the interconnectedness of all forms of weaponry, nuclear, conventional, and biological and chemical. Technical genius applied to military strategy and tactics has produced an untenable result. Perhaps the time is coming when

humankind will recognize that the attempt to find or establish peace through war and the threat of war has brought us to the threshold of understanding the futility of war, the threat of war and preparation for war.

(c) Pax Christi therefore urges that all efforts at integrating work for human rights and development should make creative use of the Decade for a Culture of Peace and Non-Violence for the Children of the World proclaimed by the United Nations General Assembly on 10 November 1998, and urges education on the links between human rights and development as a component of a culture of peace and non-violence.

(d) Finally, Pax Christi urges that the momentum against the scourge of landmines developed within the past few years not be allowed to wane. The international treaty against landmines needs to be complimented by concrete programmes for landmine removal and ongoing rehabilitation of landmine victims, and of the victims of other kinds of weapons. Perhaps the efforts towards development that have employed so much human investment with less than adequate results can be attributed to a simple flaw, namely, the failure to respect the rights of victims, be they the victims of war or of other injustices.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/50
29 January 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 (g) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICES

Written statement submitted by Pax Christi International, International Catholic Peace Movement, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with the Economic and Social Council resolution 1996/31.

[10 December 1998]

GE.99-10670 (E)

Conscientious objection: the right to refuse to kill

1. Out of the agony of the bloodiest century in human history, whose two world wars alone produced tens of millions of maimed and dead, a conviction has seized many that as humanity faces the third millennium it must make an about-face in the matter of resorting to war's violence to resolve conflicts.

2. Pax Christi, the International Catholic Peace Movement, has made many interventions to the Commission on Human Rights on the right of conscientious objection to military service. In common with other NGO's in consultative status, Pax Christi thanks the Commission for its concern for this right. The concern has been expressed in dealing with, among others, the thorny issues of the right of the war objector to claim asylum and the right to alternative service compatible with the reason for the conscientious objection, service which is made punitive now as it is of longer duration than the period of military service.

3. Pax Christi has emphasized that conscientious objection applies in a special way to the young who are conscripted and dragooned into military and war service. They are then subjected to military obedience, an absolute obedience which rules out questioning of orders or dissent under pain of severe punishment, even death.

4. The experience of the twentieth century has led Pax Christi members and large numbers of the Catholic community to a fresh assessment of war and violence.

5. Since modern technological war is total, allowing for no discrimination between combatants and non-combatants, many are convinced that engagement in it, is fraught with moral peril. The killing of civilians, even schoolchildren at their desks, in the bombardment of cities, can be assimilated to murder. In 1965, the bishops of the Catholic world, meeting in Rome, supported the consciences of war objectors when they termed the war which destroyed whole areas along with their populations as "a crime against God and man". Once a war is declared - and each war declared by a nation-State is invariably termed a "just war" - horrendous policies can be put in force. In addition to the destruction of the "enemies", the warring nation-state is free to turn its destructive powers against its own citizens, minorities or dissenters. The Second World War surpassed all others in the number of citizens put to death in Europe's concentration camps or deported to die in Siberia and Asiatic Russia.

6. With the communication revolution of our century, the old myths of war service and its glory have lost their seduction. Instead, the dread realities of modern war have become imprinted on our consciousness. Another result of the communications revolution is the heart-stopping presentation of the sufferings that afflict humankind, starvation, homelessness or the eruptions of nature in floods or earthquakes. The commonality of humankind, turning away from war's violence in which its members have been used as pawns, either as targets or perpetrators, has shown an increase of tenderness in assuaging pain around the world. The younger members of society are in the forefront of volunteer services in their local communities and in aid programmes which cross borders and seas. One of the fastest-growing disciplines in colleges i

the United States is that of Peace studies. Young people are investigating the ways in which they can become activists in avoiding war and violence and in conflict resolution. The seemingly negative stance of conscientious objection is only a preparatory step towards a conscientious affirmation. During their college years they wish to find ways of contributing to social peace and the defusing of situations ripe for outbreaks of violence. Peace studies bring to the table of rational discourse the many issues that have inflamed hearts and minds over the centuries; issues that in fact may never reach resolution but which may be prevented from descending into violence.

7. It is the young who lead the movement for the abolition of all nuclear weapons. To them, holding on to the so-called "deterrent" at astronomical cost is a waste of human resources that should be used to meet the urgent unmet needs of the human community. Pax Christi-USA arranged for a group of members, including bishops, to visit the complex of California laboratories where nuclear weapons are stored and modernized. As citizens of the nation which possesses the world's largest complement of nuclear weapons, Pax Christi-USA published in 1998 a booklet which faults the deterrent and deterrent thinking. Under the title "Morality of Nuclear Deterrence", 94 bishops members of Pax Christi-USA pointed out that with the break-up of the Soviet Union and the end of the Cold War, "the Cold War weapons amassed throughout that struggle have survived the struggle itself". They expressed the fear that "instead of progressive nuclear disarmament, we are witnessing the institutionalization of the nuclear deterrent". The booklet carried the unequivocal statement delivered to the First Committee of the General Assembly by the representatives of Pope John Paul II: "Nuclear weapons", he stated on 19 October 1998, "are incompatible with the peace we seek for the twenty-first century. They cannot be justified. They deserve condemnation ... The great task ahead for the twenty-first century is to move from a culture of violence to a culture of peace".

8. The General Assembly heard almost the same words on 10 November 1998 in an appeal led by 23 Nobel Peace laureates. Their appeal was for a Decade of Peace and Non-Violence from 2001 to 2010. The proclamation calls on each State Member of the United Nations to take the necessary steps so that the principles of non-violence are taught at every level of society. Among the signers of the appeal were Mairead Corrigan Maguire of Ireland, Mother Teresa of Calcutta, Nelson Mandela and Archbishop Desmond Tutu of South Africa and His Holiness the Dalai Lama. While general steps may hasten the vision of a culture of non-violence, it is only when non-violence inhabits the human heart that it will spread. When one human heart is on fire with non-violence it can transmit it to others by word, by deed and by life lived in the spirit of non-violence.

9. While the subject of this statement is conscientious objection to military service, Pax Christi has broadened the subject to "the right to refuse to kill". Many nations have included the right to conscientious objection in their military codes since the issue was first introduced in the Commission on Human Rights by an NGO in 1970. In the past decades, wars have been fought in areas where the military code makes no room for conscientious objection but countenances massacres of the wives and children of the male combatants.

10. Among the members of Pax Christi are many who have embraced complete non-violence in their lives. For them, the right to refuse to kill reaches into every aspect of their lives, not simply warfare, but day-to-day living where violence may take the form of life-threatening criminal acts. A person sworn to non-violence will defend himself or herself to the extent possible but will not take a life. This position, formerly a marginal one held by certain groups, has ceased to be marginalized as increasing numbers of men and women across the globe share it and act on it. The effects are being perceived in the wider society.

11. These members of Pax Christi find the resource for their witness of non-violence in the early centuries of the Common Era we refer to as the First Millennium when the followers of Jesus suffered the severest penalties, even death, for their refusal to take life. They took this path in imitation of one who suffered execution on the cross while loving and forgiving his executioners.

12. In a period when any violence may lead to all violence, namely a nuclear explosion, the witness of total non-violence may be salutary; it points to the utter sacredness of life and to the most basic right of all, the right to life.

13. By rejecting the option of violence, the right to refuse to kill opens up the question of how human beings can act when violent methods of resolving disputes are the accepted norm. The prior rejection will open doors to creative responses of non-violence that are already at work in societies around the world. Ridding people and their societies of the propensity for violence and warmaking relies in the end on the transformation of consciousness. The assertion of the right to refuse to kill and the example of those who live by this principle will contribute to this transformation of consciousness.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/51
29 January 1999

ENGLISH*
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 (g) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Written statement submitted by War Resisters' International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council Resolution 1996/31.

[11 January 1999]

---

* Translation supplied by the submitting organization.

1. The year 2000 has been declared by the United Nations as a year of the culture of peace, and the first decade of the century is dedicated to the culture of non-violence. We acknowledge these decisions, which reflect humanity's fear of destruction by war, and the necessity of finding other means to solve conflicts. We know there will always be conflicts and that it is desirable that conflicts appear openly. The danger is when people try to solve conflicts using weapons. We demand that an international court of arbitration be entitled to decide on controversial issues, that a conciliation commission be set up to examine such cases, and that mediation be used for better management of conflicts.

2. It appears clear that the only cause of war is the army itself. Of course there will always be physical violence and use of weapons by uncontrolled people. But retaliation by an organized army has as the consequence of worsening a situation of violence, turning it into a civil or external war. We demand the abolition of armies and the prohibition of all weapons - their production, sale and use - from light weapons to atomic devices. We are opposed to military recruitment for national armies and for private militias. We recall the fact that most cases of human rights violations are committed by soldiers.

3. Article 3 of the Universal Declaration of Human Rights recognizes the right to life and to the security of the person. It is obvious that soldiers put into danger their own lives and those of their opponents. The setting-up of an army is already a violation of this article of the Universal Declaration. The international covenants have provided scandalous exceptions for armies in case of forced labour and capital punishment. We must make armies illegal and declare any armed establishment as illegitimate. Every person assembling an army should be considered responsible for a crime against humanity and brought to court for trial. Until now only defeated militaries have been condemned and even these not always.

4. Einstein said: If humanity does not destroy weapons, weapons will destroy humanity. It is high time at the dawn of the twenty-first century to abolish weapons and armies. The Conscientious Objectors by their refusal of any violence are witnessing today the peace we are longing for. They deserve the unanimous support of the Commission on Human Rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/52
29 January 1999

ENGLISH
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement submitted by the International Rehabilitation Council for Torture Victims, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 January 1999]

GE.99-10611 (E)

Introduction

1. The International Rehabilitation Council (hereinafter IRCT) is a non-political and independent association of centres for the rehabilitation of torture victims. IRCT represents the health profession's response to the problem of torture. The primary objectives of IRCT are to promote and facilitate access to rehabilitation for primary and secondary victims of torture, and to contribute to the prevention of torture globally.

Medical aspect of torture

2. As a health professional organization, IRCT is particularly concerned with the medical aspect of torture. The analysis and documentation the health professionals have made concerning torture is our strength. By helping the victims we gained new insight into the aims and effects of torture. IRCT would like to draw attention to the role of health professionals in the work against torture.

3. First of all, it is important to realize that health professionals possess valuable expertise in recognizing, documenting and healing cases of torture. This requires both the international community and the health care profession themselves to work actively for their inclusion and recognition in the framework of the human rights institutions and their work.

4. Second, it is important to recognize the important work carried out by health professionals as healers once torture has taken place. Little interest seems to be taken by the international community in torture victims unless their story can be used in order to create focus or in order to support a statistic. Experience has shown that torture victims are often victims in a double sense. First, by being exposed to the physical/psychological act of torture and, second, by not being able to talk about it. This is caused by a feeling of shame and guilt instilled in the victims by the torturer throughout the process. IRCT believes that it is important that they be offered a chance to be rehabilitated without having to tell their story to anyone but the health care personnel involved in their rehabilitation.

5. Third, it is important to protect health care personnel who may be in danger of becoming involved in torture. The ethical and moral code of health professionals has to be emphasized and developed. Training and discussion in ethical dilemmas is essential. In addition, the legal rights of those health professionals who refuse to take part in torture have to be ensured. They are often threatened with torture themselves or are prosecuted for disobeying orders.

6. IRCT urges the Commission to recognize the central role already played by the health profession and the potential for development existing within the profession, in the fight against torture. To this end, IRCT asks for increased support to the United Nations Voluntary Fund for Victims of Torture in order to secure the economic foundation for medical services to victims of torture.

Impunity

7. One of the sad facts discovered during the work of rehabilitation is that the aim of torturers is to imprint their victims with horrors which will not only continue to follow them for the rest of their lives but will also adversely effect any personal relationships the victim has with other human beings. Although the victims may escape the mere physical control of their torturers, the physical and mental scars left on the victims will ensure the shadowy presence of their torturers for the rest of their lives.

8. Doing nothing is a choice as much as an abusive act. This may also be reflected in impunity for perpetrators, which is both a denial and an implicit recognition of the torture which has taken place. Impunity for violations of human rights keeps the torture victims in a perpetual painful feeling that injustice is done to them again and again, long time after the physical torture is over.

9. A form of recognition which will be an important tool in the fight against impunity is the recent adoption of 26 June as United Nations Day for Victims of Torture. This year, IRCT, along with a number of other international NGOs working against torture, has chosen impunity as the theme of its 26 June commemoration. By seeing their torturers brought to justice, the victims will have final proof that the international community regards the torturers as the criminals; it is they who should feel shame and guilt, not the victims.

10. IRCT urges the swift adoption of the principles for the protection and promotion of human rights through action to combat impunity.

11. Furthermore, IRCT urges the swift adoption of the proposed basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, seeing this as an important element of the fight against impunity.

International obligations

12. The Convention against Torture, the most important international legal instrument in the fight against torture, is one of the least ratified of the major international human rights instruments. Together with five other international NGOs, IRCT stands behind a campaign for ratification of the Convention against Torture. The Convention contains important provisions concerning States' obligation not only to prevent and punish torture, but also to provide rehabilitation services in those instances where torture has already taken place. In this respect, it is crucial that States implement the provisions of the Convention and that they take concrete action in order to ensure the rights laid down therein.

13. We urge the Commission to give recognition to and support this initiative.

14. Furthermore, IRCT would like to see the adoption of an unambiguous and strong text of the optional protocol to the Convention against Torture, in order to prevent torture in places of detention.

- - - - -